Supreme Court, U.S.
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No. 02-1326

In the Supreme Court of the United States

$558,723.32 IN U.S. CURRENCY, ET AL.,
ROBERT A. MICK,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether probable cause to support seizure of property is to be determined as of the date of seizure or as of the date of the forfeiture hearing.

Whether the failure of the government to follow the law requiring immediate institution of judicial forfeiture proceedings and the resultant one year delay between the seizure of property and the filing of the forfeiture complaint violated Petitioner Mick's due process rights.

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18 U.S.C. §983(a)(1)(A)(i) 2

18 U.S.C. §983(a)(3)(A) 1

18 U.S.C. §983(c)(2) 1

19 U.S.C. §1601 . . . . . 1, 3

19 U.S.C. §1610 . . . . . 2, 4

REPLY OF PETITIONER

In its reply the government acknowledges the conflict in the Circuits regarding determination of probable cause but suggests the disagreement has been resolved by Congress through the enactment on December 21, 2000 of the Civil Asset Forfeiture Reform Act (CAFRA).

CAFRA does not resolve the conflict for this Petitioner or others adversely affected by misapplication of the provisions of 19 U.S.C. §1601 et. seq. prior to that date. The action of Congress in shortening the time required for institution of forfeiture proceedings and raising the government's burden of proof to a preponderance of the evidence does, however, underscore the denial of due process in this case.

Under the amended provisions of CAFRA the government may prove its case based on evidence acquired after the filing of the forfeiture complaint. See 18 U.S.C. §983(c)(2). The government would seemingly apply this provision retroactively since the best evidence sited in the government's statement here consists of evidence presented during this Petitioner's criminal trial which took place more than two years after the seizure and one year after the filing of the forfeiture complaint.

The government, having presented CAFRA as a shield for its failure to comply with the provisions of 19 U.S.C. §1601 et. seq in this action, should also concede that CAFRA now requires the filing of a forfeiture complaint not later than 90 days after a claim has been filed for the subject property. See 18 U.S.C. §983(a)(3)(A). In this case the forfeiture complaint was not filed until more than eight months after the Petitioner's first claim was filed.

CAFRA also requires written notices to interested parties no more than 60 days after the date of seizure. See 18 U.S.C. §983(a)(1)(A)(i). In this case the government intentionally employed a piecemeal approach by forwarding separate notices for various items seized and did not forward the notices for the $685,673.32 cash until February 4, 1998, more than eight months after seizure. Even then the government waited an additional four months before filing the forfeiture complaint.

Nowhere in the government's response is there any explanation for the failure to comply with the still-existing provisions of 19 U.S.C. §1610 which prohibited the administrative forfeiture proceeding employed here and required the immediate filing of a judicial forfeiture complaint since the combined assets had a value in excess of $500,000.00.

I. Despite Enactment of the Civil Asset Forfeiture Reform Act (CAFRA) a Conflict Remains Between the Circuits Regarding Determination of Probable Cause for Forfeitures Instituted Prior to December 21, 2000.

In response to the conflict in the Circuits and perhaps the abuse of the system in situations like ours, Congress specifically authorized the use of after-acquired evidence in determining the legality of a forfeiture seizure, but raised the government's burden of proof to a preponderance of the evidence.

There still remain numerous cases still working their way through the courts which require specific direction from

this court as to when probable cause for forfeiture seizure is required. This remains an issue of great public interest and impact.

Even if CAFRA seems to resolve the statutory question, the constitutional question remains. Is the practice of the Sixth Circuit in measuring probable cause based on evidence acquired years after the initial seizure consistent with the constitutional requirements of the Fourth Amendment? Clearly it is not. The conflict between the Circuits on this issue is separate and distinct from any remedy provided by CAFRA, and remains for this Court's resolution.

II. The Revisions Contained in CAFRA Support Petitioner's Claim of Due Process Violations in These Proceedings

The government's conduct in this case failed to conform with the then-existing statutory requirements of 19 U.S.C. §1601 et. seq. The timing of notices and the filing of the complaint also failed to comply with the newly-revised requirements contained in CAFRA.

By any measure, the government failed to comply with the fundamental statutory requirements for processing a forfeiture complaint following seizure. Petitioner's argument in this regard is unrebutted.

III. The Government's Response to the Due Process Claim Fails to Address the Government's Noncompliance with the Requirements of 18 U.S.C. §1610.

The government in its Response did not even attempt to respond to its failure to commence an immediate judicial forfeiture pursuant to the requirements of 18 U.S.C. §1610. There is no response, no explanation, no excuse.

The failure to comply with this statutory requirement constitutes a clear violation of constitutional due process as well.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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